IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

Crl.Rev.Pet.No. 589 of 1998()

CC.91/1995 of JUDL.MAGISTRATE OF FIRST CLASS COURT, OTTAPPALAM

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REVN. PETITIONER:

FOREST RANGE OFFICER,
OTTAPPALAM FOREST RANGE,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI C.K.SURESH

RESPONDENTS:
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1. SURENDRA MOHAN GUPTA,
MANAGING PARTNER, FLORAL AROMATICS,
SILK STREET,
CALICUT.

2. V.GANGADHARAN NAIR,
MANAGER,
FLORAL AROMATICS, SILK STREET,
CALICUT.

3. ALPHONSE WILLIAM, CLERK,
FLORAL AROMATICS, SILK STREET,
CALICUT.

BY ADV. SRI.M.RAMESH CHANDER (IN DELAY)
SRI.P.RAGHUNATH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON 16/10/2007 PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.R.P.No.589 of 1998-B

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Dated this the 16th day of October, 2007

O R D E R

The revision petitioner is the complainant Forest Range Officer, Ottappalam, in C.C.No.91/1995 in the court of the Judicial Magistrate of the First Class, Ottappalam, with respect to the offences under Section 27 of the Kerala Forest Act and Rule 3(1) of the Kerala Forest Produce Transit Rules (hereinafter referred to as the K.F.P.T Rules) read with Rule 23 of the K.F.P.T Rules in which the accused was discharged.

2. The prosecution case is that the accused, three in number, the Managing Partner and the officials of Floral Aromatics, Silk Street, Calicut, illegally processed and transported 500 kgs of sandalwood oil produced from clandestinely collected sandalwood from reserve forest. The above quantity of sandalwood oil was seized by the Sub Inspector of Railway Police, Shornur on 14/09/1993 at abut 12 noon at the Shornur Railway Station; registered the crime. Thereafter, the F.I.R and the seized properties were transported to Ottappalam Forest Range Office.

At the preliminary stage the court examined Pws.1 to 7 and got marked Exts.P1 to P27. It was found that the offence under Rule 23 of the K.F.P.T Rules are barred by limitation vide Section 468 (2)(b) Cr.P.C. It was found that there was no material to establish even prima facie that offence under Section 27 of the Kerala Forest Act is attracted.

3. The statement of PWs.1 to 4 is with respect to the recovery of the article and the sampling done by the police. It is established that 20 cardboard boxes containing zinc containers with the address of the sender as Floral Aromatics, Silk Street, Calicut, and the consignee is an addressee at Kanpur. 50 gms each from each of the containers were taken as samples which were found to be sandalwood oil on chemical examination. PWs.5 and 6 are employees of the Floral Aromatics. PW.7 is the Forest Officer/complainant. The documents seized included 17 documents produced by the first and the second accused to establish the legitimate possession and transit of sandalwood oil. It is the case that Ext.P24 Raw Material Stock Register is a concocted one as the suppliers of red oil were found to be non

existent as the registered letters sent to some of them were returned mentioning that there is no such persons. But only Ext.P19, one of the letters, was produced. There is nothing to show that further enquiry in the matter was made. The documents produced included the licence etc. enabling the first accused to purify red oil and extract sandalwood oil. It is the undisputed evidence that the red oil is extracted from heartwood and roots of the sandalwood tree. The licence to Floral Aromatics of which the Managing Partner is the first accused is only to purify red oil and extract sandalwood oil. It is the case of the accused that they have only purchased red oil and thereafter extracted sandalwood oil. It was found that the concern owned by the accused has got only machinery with which the sandalwood oil can be extracted from the red oil. It is submitted that the above concern is not having the machinery to extract red oil from sandalwood pieces. Although, it is the case that Ext.P24 contained mention of purchase of red oil from 418 persons and the sellers could not be located and hence, Ext.P24 is a concocted document. It is pointed out by the court below that even then at the most it would only show that the accused have failed to keep a proper account of the purchase. It

was also noted that only one of the returned letters sent to the alleged sellers was produced. There is no evidence adduced by the prosecution to show that a proper investigation was made as to the fact that the above mentioned sellers in Ext.P24 are all fictitious persons. There is no evidence that it is the Floral Aromatics that procured sandalwood and extracted red oil. In the circumstances, presumption under Section 79 of the Act would not help the prosecution. It was in the above fact situation that the court below found that there is no evidence to frame a charge under Section 27 of the Kerala Forest Act. So far as violation of Rule 23 of the K.F.P.T Rules the prosecution under Rule 27 of the K.F.P.T Rules is evidently barred by limitation as the detection of the offence is on 13/09/1993 and the charge sheet was filed only on 16/09/1995; and the period of limitation as per Section 468 (2)(b) Cr.P.C is one year. In the circumstances, I find no reason to set aside the order of the court below. The criminal revision petition is dismissed.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.589 of 1998-B

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O R D E R

16th October, 2007